

**STATE OF CALIFORNIA
FRAUD ASSESSMENT COMMISSION**

**Summary Meeting Minutes
Anaheim, California
November 16, 2010**

In attendance: Lisa Middleton, Chair, and Commission Members Lilia Garcia, Don Marshall, John Riggs, and Jiles Smith.

Others present: Rick Plein, Deputy Commissioner, Enforcement Branch, California Department of Insurance; Eric Weirich, Bureau Chief, Enforcement Branch; and Vanessa Himelblau, Senior Staff Counsel, Legal Division.

Chairperson Lisa Middleton opened the meeting by thanking the California District Attorneys Association for making the room available to the Fraud Assessment Commission so that the meeting could be held in conjunction with the District Attorneys training conference.

Chairperson Lisa Middleton asked the Fraud Commission members if they had an opportunity to read the summary minutes from the previous FAC Meeting and if there were any comments.

Motion

Commission member Lilia Garcia made the motion to accept the September 8, 2010 summary minutes as submitted.

Commission member John Riggs seconded the motion.

Action

The minutes were unanimously passed.

The next item of business was the approval of the drafted bylaws of the Fraud Assessment Commission (FAC) that were presented in the September meeting. Chairperson Middleton asked members of the Commission to comment on the bylaws.

Commissioner Don Marshall stated the submitted bylaws follow the basic outlines of many of the bylaws of commissions throughout the State. With the help of all involved, we were able to design bylaws that cover the areas that need to be addressed and kept them relatively short.

Commissioner John Riggs agreed with Commissioner Marshall's statement and also stated the bylaws are a great foundation and a great way to start.

Chairperson Lisa Middleton asked if there were any public comments on the bylaws. Being none, the Chairperson called for a motion.

Motion

Commission member Lilia Garcia made the motion to approve the bylaws as submitted.

Commission member Jiles Smith seconded the motion.

Action

The Bylaws were unanimously passed.

Public Comments

Tim Hack with the Injured California Workers' Association is representing injured workers that have been denied basic health care for injuries that have occurred on the job. The past years, Mr. Hack, his family, friends, and co-workers, as well as their families, have been through a living hell. The building they worked in from September 2006 through January 2009 had no heat or air conditioning and had several prior mold remediations (Toyota of Poway). We were unaware of the fumes and the numerous types of mold, such as stachybotrys, we inhaled and ingested daily would affect our physical health and cognitive function long after we were no longer even in the building. Unaware that the toxic soup spent hours in would adhere to our clothes we brought home to the one we love the most. Mr. Hack further stated that the owners of Toyota of Poway and the workers' comp insurer, CorVel, gambled with employee health. Mr. Hack is asking that all district attorneys take a close look at this practice of silencing injured workers and their proponents.

Sharon Kramer, a California citizen, has been researching and writing about the fraud in California and the United States' health policy for about six years. Ms. Kramer stated construction standards were changed in the late 70's to make buildings more energy efficient. At the same time, man-made materials that easily wick water, made the buildings act as gigantic petri dishes. When water is added, they easily wick water when you have leaks or floods and so microbial contaminants, such as mold, easily grow. If you have excessive microbial growth inside of a building, people are going to get sick. It became expensive for insurers when people were having severe illnesses. Ms. Kramer further stated that insurers, employers, builders, and real estate agents have taken deceptive measures to try and shut down the liability. Ms. Kramer states that something has to be done to shut down this fraud.

Election of a New Chair

The next item of business was the election of the new Chair and Vice Chair for the Commission. Chairperson Middleton read the rules regarding the election process:

1. Term is for one year and is to end on November 16, 2011.
2. All Commissioners are eligible to run for the Chair position.
3. Candidacy will be determined by the pronouncement by a Commissioner of his or her intention to run.
 - a. Each member will be asked whether he or she intends to run for the Chair position
 - b. The candidates who respond affirmatively shall speak in the order in which they declared candidacy.

- c. Candidates will have five minutes to introduce themselves and their platform; goals for the FAC in the upcoming year, proposed changes in the overall directions of the program.
 - d. Each candidate may choose the topics and the formats of his or her speech.
- 4. The public and District Attorneys shall have the opportunity to ask the candidates questions and/or to comment on the election.
 - a. The public and District Attorney comments will be limited to three minutes.
- 5. The Chair shall be elected via open voting verbally on the record by appointed and present Commissioners.
 - a. Each Commissioner shall have one vote, and no proxy voting shall be permitted.
 - b. The candidate to win a majority of these votes shall be named the Chair.

Chairperson Middleton asked the Commissioners if they would like to stand for election as the FAC Chair.

- 1. Commissioner Jiles Smith declared his candidacy
- 2. Commissioner John Riggs declined
- 3. Commissioner Lilia Garcia declined
- 4. Commissioner Don Marshall declared his candidacy

Chairperson Middleton called on Commissioner Smith to outline his agenda for running.

Commissioner Smith proceeded with his remarks:

“I’d like to start out by saying a simple number – 1,714 days. That’s the number of days I’ve been on the Commission, which is four years, eight months, and eight days.” I had the privilege and honor of working with some great people from Donna Gallagher, who gave us a wealth of information from the position of State Insurance Fund. Bill Zachary, our previous chair for many years, who taught us quite a bit as well; up to our present Chair. I want to commend my fellow members as well; they are the best at what they do.

“I think I was put on the Commission for one major reason; in the last nine years at the major facilities, I have not had a lost time accident. I have no cases in front of any DA’s because I fix problems before they happen. That’s a unique art, unique skill that I think is important for the chairman.” Once you sit on that seat, your perspectives may tend to change. You are a person who wishes to move the system forward, and that is my goal, to move the system forward.

We did an outstanding job putting together our bylaws, but the next step is very important as well; a long-term strategic plan that Commissioners and Chairmen can focus on, what are our true goals and objectives. Are we going to cover the whole state or leave certain counties out? We have to have an open and honest dialogue on what direction we wish to go with the Commission.

My experience on the Commission, in the last four years, two major incidents come to mind:

We were asked a couple of years ago in 2008 that we should raise the assessments. DA's asked for a 12.5 percent increase, they had no idea what was going to happen in the future. I stood alone and argued that we should not raise assessments at this time; the people of California could not sustain it. I see beyond the horizon, not focusing on what's happening today, what's happening in the future.

We understand it takes money to prosecute crimes. How can we work together? For the last couple of years, we focused on outreach reducing the possibility of claims happening in the first place. First is fighting the fact, fraud after the fact. We have to also focus on key areas, parts of the state as well as types of crimes.

We have a unique situations popping up with sleep apnea, sleep disorder, sexual dysfunction, and liens. We have to get our hands around that and put a group or Commission together to address that. Don't wait for it to get out of hand.

In closing, I do other stuff in the community. I'm proud of my activities as a track coach at the local high school and I'm an equal opportunity commissioner for the County of San Bernardino. "My longevity on the Commission, as well as my relationship building with each and every one of you, as well as the Commission, I think qualifies me for the Chairmanship."

Chairperson Middleton called upon the next candidate Commissioner Marshall to present.

I've been on the Commission for about a year and the reality is the State of California, as well as prosecutors and the Department of Insurance, can't miss with any of the people on this panel. I have nothing but respect for everyone here. This is a can't lose situation, it's not important who gets it, as long as we continue in our uniform. That includes everyone in the room, the uniform attack against workers' compensation fraud, which is why the panel was originally formed.

I did have a chance to go through the RFA's from last year and I had a chance to see some things that I think need to be adjusted. It's not something that necessarily has to be from the Chair, as being from the Board. From the Chair's position, I think you have the opportunity to drive the Commission in a particular direction. I have four areas that I think need work:

Number one is the RFA Procedure; the requests for assessments. I'm not sure they measure what needs to be measured. The purpose of the assessment was created to prosecute fraud. I think it's important that the RFA's address those areas and allow counties to best identify where they have in fact succeeded in that area, by giving additional ideas to counties that may not be as successful.

Secondly, we should look at realigning some of the spending. I agree with the position of the original section regarding outreach, I think it's important. However, I'm not sure if doing it county by county makes the most sense, financially or for the message. Instead of having each county responsible beyond what they normally are responsible for, such as Chamber of Commerce meetings for employers; maybe a statewide approach where there's a uniform message and method to get that information across.

Thirdly, we need to look at the creation of a Medical Fraud Task Force. To have a proper task force, there must be a commitment both by the prosecutors and the investigators associated with it. It's not a program that can roll people in and out of on a yearly basis. The expertise required in the investigation and prosecution of health care fraud requires that type of commitment. We should look to putting some of the assessment funds towards that commitment.

Finally, there should be a position of Ombudsman within the CDAA. The reality is that as new prosecutors move into the position of workers' compensation fraud, many of them just don't get it. They don't understand the complexities of the crime, or they give too much power to the complexities of the crime, and cases that should be charged aren't. Unfortunately, that causes insurance carriers, self-insured's, and private investigative companies, the SIU's, it requires them to basically shock the case to a county that gets it. Rather than do that, it's more appropriate that a resource be available to new prosecutors beyond the once-a-year training program; so that there can be a voice between the victim, which is the employer, not the insurance carrier, and the prosecutor's office to ensure that those cases are properly identified, investigated, and prosecuted.

I will end by saying that the experience I have going into this Commission is my fraud fighting experience. I've been doing fraud investigations for over 20 years, not including my law enforcement career. It's given me an excellent opportunity to see the State's anti-fraud program in its entirety.

"And, again, regardless of the outcome of this election, I look forward to working both with the Commission and with the prosecutors and people of the State of California in ensuring that the assessment that goes towards fighting fraud actually does fight fraud. Thank you."

Chairperson Middleton opened the floor to the public for questions or comments directed to either candidate.

Question and Answer Session

The following persons took the floor and had comments and questions for both candidates:

Dan Stroski of Yolo County raised the issue to both candidates as to whether they would consider stabilizing the funding from the annual RFA funding cycle to a two, three or five year cycle. He further stated the RFA process takes up most of his time justifying his existence in the program for the following year.

Candidate Jiles Smith stated he was not a strong advocate for changing the funding cycle. A longer funding cycle would mean the program is more susceptible to adverse effects of personnel changes.

Candidate Don Marshall stated he was in favor of simplifying the RFA process but the problems he has is the lack of consistency with the current system. He would, however, support expanding the funding cycle if it's legislatively available.

Gary Fagan of San Bernardino County posed two questions to the candidates. Mr. Fagan voiced his concerns with the stability of the assessment and accountability from the Department of Insurance in regards to performance numbers by regional offices and how each county is supported by that regional office.

Candidate Don Marshall agreed that there is not enough money to fight fraud, but is aware that fraud is a problem that can't be measured. He also believes the RFA does a good job of putting the information out, but the Commission has not come up with a way to verify the money is being spent properly. Candidate Marshall posed the question to Mr. Fagan, "Are we putting too much money into the counties for investigators and not enough for prosecutors?" Do your questions lead to an additional work or study to ensure every county has the support from the CDI or has sufficient assessment to make up for any deficiencies that might exist?

Candidate Jiles Smith responded that the people of California don't have the money but we can work together to create a score card to make sure the system works efficiently so that counties know what they are being measured on. He further stated the bylaws have been completed and the next step is to work on a strategic plan so that CDI and the DA's are held to the same standards.

Sharon Kramer, a California citizen, posed the questions, "What will you do if you chair this committee to assure that it's not just the insurers or the employers who are the victims?" How can you help the DA's office go after the insurers themselves?

Candidate Jiles Smith stated that all kinds of fraud are important, one is not valued over the other and are measured equally; the only variable would be how critical the theft is.

Candidate Don Marshall states from the Commission standpoint, the key is to ensure the prosecutors who do find that type of fraud would be expected to pursue it. In many cases, workers' comp fraud is not an actual victim; it is the employer who is paying the bills either for the premium or the missed work.

Dominic Dugo of San Diego County asked the following question, "Would you please elaborate on your specific view about outreach and the role that prosecutors should have in that area?"

Candidate Don Marshall stated that outreach is required and appropriate. Not every county agrees on the type of resource or outreach, but he does believe that it can be done at a statewide level. This will ensure the message is uniform and appropriate. He

further stated that each county is still responsible for their own outreach so that it reaches the proper people.

Candidate Jiles Smith is a strong proponent for outreach and states it's an integral part of what we are trying to do. Counties who choose to do outreach, need to tailor it to their particular audience. He encourages the DA's to reach out to their top five employers and talk to them.

Gerald Motter, an investigator with Santa Barbara County, asked both candidates what balance the Commission is looking for when they issue grant funds – collections, arrests, prosecutions, types of investigations. What areas are important?

Candidate Jiles Smith stated there is no right or wrong answer to the question since all types of fraud are important. Counties have their own types of crime. Each county needs to decide what their best use of funds is. In reality, all areas are relevant.

Candidate Don Marshall responded that each county is unique in the type of workers' compensation crime that's occurring. Smaller counties do not have the same area of crime that bigger counties have. For us to come in and direct a county is not the best answer. The reality is the amount of money lost to fraud in the huge premium fraud scams far outnumbers the amount of money lost for an injured worker.

Chairperson Middleton commented that she appreciated all the questions and answers. "It is now the responsibility of the Commissioners to cast their votes. The order of voting will be the current chair, then Commissioner Garcia, Commissioner Riggs, Commissioner Smith, and Commissioner Marshall," stated Chairperson Middleton.

Chairperson Middleton further commented by thanking both Commissioners Jiles Smith and Don Marshall for stepping forward and expressing interest. "You are outstanding gentlemen and it has been my honor to work with you over the past year, and in either hand, the Fraud Commission is in very, very good hands," stated Chairperson Middleton.

Chairperson Middleton called for the Commissioners to cast their vote, beginning with hers;

1. Chairperson Middleton cast her vote for Commissioner Don Marshall
2. Commissioner Lilia Garcia, Aye
3. Commissioner John Riggs, Aye
4. Commissioner Jiles Smith, Aye

Chairperson Middleton requested a motion to be made.

Motion

Commission member Jiles Smith made the motion to unanimously elect Don Marshall as the Chair.

Chairperson Middleton seconded the motion.

Action

The voting of Commissioner Don Marshall as the new FAC Chair passed unanimously.

New Chair Don Marshall gave thanks to the FAC for their support.

Chairperson Middleton raised the issue to the Commissioners who would be willing to accept a position of Vice Chair.

1. Commissioner Jiles Smith declined
2. Commissioner John Riggs declared his candidacy
3. Commissioner Lilia Garcia declined

Chairperson Middleton called for a motion.

Motion

Commission member Don Marshall made the motion to elect John Riggs as Vice Chair.

Commission member Jiles Smith seconded the motion.

Action

The voting of Commissioner John Riggs as the FAC Vice Chair was unanimously passed.

Commissioner John Riggs gave thanks to the FAC for their support.

Chairperson Middleton concluded that she will now be stepping down and gave her thanks to all. It was an honor to be a part of this Commission and it is my honor to turn the seat over to new designee Carol Newman, General Counsel, at State Fund.

Before the meeting was concluded, Commissioner Jiles Smith commented and thanked Chairperson Middleton for her leadership and time with the FAC and presented her with an award.

Deputy Commissioner Rick Plein from the Department of Insurance presented Chairperson Middleton with a "Certificate of Appreciation" for her recognition as a member of the FAC and for her service to the State of California.

Gary Fagan presented Chairperson Middleton with a certificate on behalf of the California District Attorneys Association recognizing her for her dedication and contribution defending insurance fraud in the State of California.

Dominic Dugo presented Chairperson Middleton with a "Certificate of Recognition" from Bonnie Dumanis, District Attorney of San Diego County, recognizing Lisa for her two years of dedicated service as member and chair of the FAC.

Chairperson Middleton acknowledged and thanked everyone with the FAC and the district attorneys.

New Chairperson Don Marshall concluded the meeting by informing the attendees that the next FAC meeting will be on February 9, 2011, to be held at the Enforcement Branch Headquarters in Sacramento.

That concluded the business before the FAC and the meeting was adjourned.